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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT G. LUSTYIK, JR.

Defendant.

Case No. 2:12-cr-645 (TC) (DBP)

**United States' Motion for Order Requiring
Defense Counsel to Return to CISO Certain
Produced Items**

On March 8, 2013, four DVDs of discovery material were produced to the counsel for Defendants Robert Lustyik, Michael Taylor, and Johannes Thaler. On May 2, 2013, a hard drive of discovery material was similarly produced to counsel for Defendants. Afterward it was discovered that some items on one of the four DVDs as well as the hard drive contained classified information and, therefore, are subject to this Court's CIPA Protective Order (and the Amended CIPA Protective Order that replaced it). See Dkt. # 315 and 418.¹

On August 5, 2013, the CISO, who controls access to all classified information in this matter, spoke with counsel for each Defendant, including counsel for Defendant Lustyik, and

¹ Paragraph 18(a) of the CIPA Protective Order and ¶19(a) of the Amended CIPA Protective Order notes that, "All classified information produced by the United States to the defense, in discovery or otherwise ... shall be stored, maintained, and used only in the Secure Area established by the CISO [Classified Information Security Officer], unless otherwise authorized by the CISO."

asked each to return the affected DVD and hard drive (hereinafter, "Spillage Items") to the CISO.² On September 3, 2013, Counsel for Defendant Thaler returned the Spillage Items to the CISO. On September 6, 2013, Counsel for Defendant Taylor returned the Spillage Items to the CISO. As of October 10, 2013, however, over two months after the CISO's initial request, Counsel for Defendant Lustyik has not returned the Spillage Items to the CISO.

The CISO has made repeated requests to Counsel for Defendant Lustyik to return the Spillage Items. In addition to the CISO speaking with Counsel for Defendant Lustyik on August 5, 2013, the CISO sent emails to him on August 6, 2013, August 22, 2013, September 4, 2013, and October 11, 2013, requesting he return the Spillage Items to the CISO. In addition, on October 11, 2013, the CISO called Counsel for Defendant Lustyik and left a voicemail requesting he return the Spillage Items to the CISO.³ Counsel for Defendant Lustyik has not responded to any of these emails or the October 11th phone call.

As Counsel for Defendant Lustyik has not responded or complied with the CISO's communications with him asking for the return of the Spillage Items (which the other Defendants

² On September 4, 2013, reproductions of the affected DVD and hard drive (without classified material) were produced to counsel for all Defendants, including counsel for Defendant Lustyik.

³ On October 10, 2013, the undersigned also called Counsel for Defendant Lustyik and left voicemails asking him to respond with when the Spillage Items will be returned to the CISO. Counsel for Defendant Lustyik has not responded to these voicemails.

have returned), the United States requests this Court order counsel for Defendant Lustyik to return the Spillage Items to the CISO no later than October 18, 2013.

Respectfully submitted,

JACK SMITH
Chief
Peter Koski
Deputy Chief

JAIKUMAR RAMASWAMY
Chief

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MARIA LERNER
PETER MASON
Trial Attorneys
Public Integrity Section

By: /s/ Ann Marie Blaylock Bacon
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Certificate of Service

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants.

/s/ Peter Mason

PETER MASON

Trial Attorney

Dated: October 11, 2013